

## **FINDING OF EMERGENCY**

### **CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Title 4, Division 13, Article 2

#### **Finding of Emergency**

Pursuant to California Public Resources Code 26009, the regulations being adopted herewith by the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

#### **Necessity**

These Emergency Regulations are necessary to implement, interpret and make specific Public Resources Code Sections 26000, *et. seq.* by amending procedures that will enable the Authority to grant sales and use tax exclusions for qualifying advanced transportation, alternative source, advanced manufacturing, and recycled feedstock applicants as defined in Public Resources Code Sections 26003 and 26011.8, as amended by Chapter 768 of the Statutes of 2015, which authorizes the Authority to award such sales and use tax exclusions.

#### **Authority and Reference**

Authority: Public Resources Code Section 26009 and 26011.8. Section 26009 of the Public Resources Code authorizes the Authority to adopt emergency regulations necessary for the immediate preservation of the public peace, health, safety, or general welfare in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Reference: Public Resources Code Section 26011.8; Revenue and Taxation Code Section 6010.8. This regulation will implement and make specific Section 26011.8 of the Public Resources Code.

#### **Informative Digest**

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to provide financial assistance, as defined, to Participating Parties, as defined in Public Resources Code Sections 26003(a)(7), for alternative source, advanced transportation, advanced manufacturing, and recycled feedstock Projects, also known as the Sales and Use Tax Exclusion Program (“Program”). (See Public Resources Code Sections 26003(a) and 26011.8(a), and Revenue and Taxation Code Section 6010.8.) Existing law establishes the purpose of the Program as promoting the creation of California-based

manufacturing, California-based jobs, advanced manufacturing, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. (Public Resources Code Section 26011.8(a).)

Existing law limits the amount of sales and use tax exclusion (“STE”) that CAEATFA may grant in each calendar year to \$100 million. (Public Resources Code Section 26011.8(h).) Existing Program regulations establish a competitive process whereby applications are ranked based on specific objective criteria to determine the order of priority for consideration by the Authority if the Program becomes oversubscribed in a given month. Existing Program regulations also require every applicant to pay an application fee of 0.05% of the requested Qualified Property amount at the time of application.

CAEATFA staff recently identified ways the Program could assist companies relocating or rebuilding after critical damage caused by natural disasters to help promote the Program’s goals of retaining manufacturing facilities and manufacturing jobs in California. The proposed Emergency Regulations would add a new competitive criterion and provide CAEATA’s Executive Director the ability to waive application fees for applicants rebuilding or relocating due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application. The proposed amendments and objectives for each section are below.

The proposed Emergency Regulations will allow the Authority to continue to offer financial assistance to alternative source, advanced transportation, advanced manufacturing, and recycled feedstock projects. By promoting these types of projects the Authority promotes California-based manufacturing, California-based jobs, the reduction of greenhouse gases, or the reduction in air and water pollution or energy consumption.

Government Code Section 11346.5(a)(3)(D) requires that the notice of emergency rulemaking shall include, “an evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations.” The Authority’s legal counsel reviewed the California Code of Regulations and found no existing regulations dealing with this issue. Therefore, CAEATFA believes that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

#### **§10032(a)(B) – Competitive Criteria.**

This section is amended to add a new competitive criterion that provides five points for a Project if the applicant can demonstrate the Project is to relocate or rebuild the applicant’s facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application,

Necessity. Existing regulations provide that, in the event that CAEATFA receives applications in excess of the statutory \$100 million cap for that calendar year, the order in which the applications shall be considered in the same month will be ranked based on four basic criteria: (1) unemployment rate in the county of the facility, (2) presence of corporate headquarters in California, (3) status as a small business, (4) and being new to the Program. These criteria were

chosen for two purposes. First, each of the criteria prioritizes applicants which provide a benefit to the state. Secondly, the criteria are objective and verifiable by Staff at the time of application.

In light of the unprecedented destruction caused by several emergency disasters in California, including the recent Northern California wildfires, and because of the benefit to the state in retaining manufacturing facilities and manufacturing jobs impacted by certain emergency, the proposed amendments would add a new competitive criterion that provides five points for a Project if the applicant can demonstrate the Project is to relocate or rebuild the applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application.

#### **§10036(a) – Application Fee.**

This section is amended to allow the Executive Director to waive the application fee if the applicant can demonstrate the Project is to relocate or rebuild the applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application.

Necessity. Existing regulations require all applicants to pay an application fee of 0.05% of the total amount of Qualified Property identified in the application, subject to a minimum fee of \$500 and a maximum of \$10,000. The proposed amendment would allow the Executive Director to waive the application fee if the applicant can demonstrate the Project is to relocate or rebuild the applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application to reduce the burden of applying for the Program and help encourage affected manufacturers to rebuild and continue operations in California.

#### **Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulation or to the Authority.

#### **Mandate on Local Agencies or School Districts**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts (pursuant to Government Code Section 11346.5(a)(5)).

## **Fiscal Impact**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional mandated cost or savings requiring reimbursement under Section 17500 et. seq. of the Government Code, or any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State.

The proposed regulations provide the ability for the Executive Director to waive the application fee if the applicant can demonstrate the Project is to relocate or rebuild the applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application. Generally, the application fee is intended to cover the cost of reviewing an application. The fee is calculated by taking 0.05% of the total amount of Qualified Property identified in the application, subject to a \$500 minimum and a \$10,000 maximum. The Executive Director of the Authority estimates an average of two Projects annually will qualify for the proposed application fee waiver, and that for each of these Projects, the average application fee will equal \$5,500, for an estimated cost of \$11,000 to CAEATFA each year. Pursuant to the State Administrative Manual Section 6601-6616, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as this a proposed emergency rulemaking.